

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Praxair Distribution, Inc.,

Case No. 18-cv-1321 (WMW/BRT)

Plaintiff,

**ORDER**

v.

Irish Oxygen Company,

Defendant.

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Before the Court is Praxair Distribution, Inc.'s (Praxair) request for attorneys' fees, non-taxable costs, and interest. (Dkt. 129.)

Praxair is a corporation that sells industrial and medical gases. Irish Oxygen Company was a customer of Praxair. Praxair brought this action against Irish Oxygen Company for nonpayment of invoices for services provided by Praxair. The Court granted Praxair's motion for default judgment against Irish Oxygen Company and awarded Praxair \$661,653.10 in damages, "subject to increase based on a Bill of Costs to be submitted by Praxair . . . detailing the amount of interest, attorneys' fees, and costs sought." Praxair now seeks to recover \$288,867.75 in attorneys' fees, \$20,667.99 in non-taxable costs not included in the Bill of Costs, and \$200,328.34 in interest on unpaid invoices through December 31, 2019.

Praxair maintains that the parties' Product Supply Agreement (Agreement) provides that if legal action must be taken to collect Irish Oxygen Company's delinquent account or otherwise enforce the terms and conditions of the Agreement, Irish Oxygen Company will

pay Praxair “all fees and costs of such collection, recovery or enforcement including reasonable legal fees and expenses.” Praxair also asserts that the Agreement specifically provides for Irish Oxygen Company to pay interest in the amount of 18% per annum. But the record does not include the operative Agreement.

As this action is brought pursuant to this Court’s diversity jurisdiction, state law governs the availability of attorneys’ fees and pre-judgment interest when neither a conflicting federal statute nor a conflicting federal court rule applies. *Weitz Co. v. MH Wash.*, 631 F.3d 510, 528 (8th Cir. 2011). Whether the parties’ Agreement is governed by the laws of Minnesota or Illinois cannot be determined from the record, nor can the Court interpret or apply the terms of the Agreement, because the record does not include the Agreement that forms the basis of Praxair’s request for attorneys’ fees and interest.

### **ORDER**

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that the request for attorneys’ fees, non-taxable costs, and interest submitted by Plaintiff Praxair Distribution, Inc., (Dkt. 129), is **DENIED WITHOUT PREJUDICE**. Any supplemental request for attorneys’ fees, costs, and interest that includes supporting documentation shall be filed within 30 days after the date of this Order.

Dated: April 2, 2020

s/Wilhelmina M. Wright  
Wilhelmina M. Wright  
United States District Judge